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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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26158 7590 08/21/2007 WOMBLE CARLYLE SANDRIDGE & RICE, PLLC ATTN: PATENT DOCKETING 32ND FLOOR P.O. BOX 7037 ATLANTA, GA 30357-0037			EXAMINER COLLINS, MICHAEL	
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No. 10/523,887	Applicant(s) SMALLEY ET AL.	
	Examiner Michael K. Collins	Art Unit 3651	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-59 is/are pending in the application.
- 4a) Of the above claim(s) 58-89 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-57 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 07 February 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>2/07/05, 5/15/06</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election without traverse of Group I (claims 1-57) in the reply filed on 6/13/2007 is acknowledged.

Priority

2. Receipt is acknowledged of papers submitted under 35 U.S.C. 119(a)-(d), which papers have been placed of record in the file.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

4. Claims 22-57 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the enablement requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to enable one skilled in the art to which it pertains, or with which it is most nearly connected, to make and/or use the invention.

- Regarding claim 22 the applicant disclose, "An enclosed carton for a plurality of cylindrical containers in a plurality of rows, including **a first row** and **a second row adjacent and above the first row**, the carton comprising:

- a. **a top panel, two side panels, a bottom panel, and two closed ends, at least one of which is an exiting end;**
- b. **top and bottom tear lines that extend across the exiting end and into at least one of the side panels and meet each other in the at least one side panel,** the tear lines defining an opening flap which is at least partially detachable from the carton along the tear lines to create an opening between the tear lines;
- c. the bottom tear line being spaced above the bottom panel;
- d. the top and bottom tear lines being located that when the opening flap is at least partially removed:
 - (1) **the container in the first row which is adjacent the exiting end and the container in the second row which is adjacent the exiting end are both prevented from rolling out of the carton, and**
 - (2) the container in the second row which is adjacent the exiting end can be removed from the carton through the opening prior to removal of the container in the first row which is adjacent the exiting end."

The written description along with the drawings disclose cylindrical containers including a first row and a second row adjacent and above the first row (see Figure 4). Therefore, if the second row is the upper row in Figure 4 then the top panel is panel (13). Consequently, panels (14,15) make up the side panels, panel (16) defines the bottom panel, and the two closed ends are formed from gluing flaps (19,20,21,22) to divider pad (30) on both sides. Where does the applicant disclose one of the closed

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ends to be an exiting end? The embodiments disclosed by the applicant seem to describe the exiting as taking place **adjacent** to an end **but through** a side (15), yet the applicant claims that a flap is formed and removed from top and bottom tear lines extending across an exiting end (not on a across a side panel) and meeting in at least one side panel. This is enabled in the applicant's disclosure by re-orienting the container (see Figure 7). If the applicant is claiming a container such as Figure 7 then the claim is not enabled by the disclosure of the applicant because it seems that second row is no longer adjacent and above the first row in this configuration. If the applicant is not claiming a container such as in Figure 7 but some further embodiment then how are the ends still attached if a flap is across the end and into the side?

- Claims 23-30 depend from claim 22.
- Regarding claim 31 the applicant discloses, "An enclosed carton for cylindrical containers arranged in a plurality of rows, including **a first row and a second row adjacent and above the first row**, the carton comprising:
 - a. **a top panel, two side panels, a bottom panel, and two closed ends, one of which is an exiting end;**
 - b. **top and bottom tear lines, each extending across the exiting end from one side panel to the other;**
 - c. **the portion of the exiting end between the two tear lines forming an opening flap which is at least partially removable to create an opening;**
 - d. the top and bottom tear lines each being at a sufficient height above the bottom panel to retain all the containers in the carton when the opening is

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created; and

e. the top and bottom tear lines being so positioned and having a sufficient distance between them to permit a container from the second row to be removed through the dispenser opening prior to removal of a container from the first row.

This is similar to claim 22. It does not seem that the written description describes the invention in terms of having top and bottom tear lines extending across the exiting end formed by the end panels but rather across the side panel and into the top and bottom panels. The embodiments disclosed by the applicant seem to describe the exiting as taking place **adjacent** to an end **but through** a side (15), yet the applicant claims that a flap is formed and removed from top and bottom tear lines extending across an exiting end (not on a across a side panel) and meeting in at least one side panel. This is enabled in the applicant's disclosure by re-orienting the container (see Figure 7). If the applicant is claiming a container such as Figure 7 then the claim is not enabled by the disclosure of the applicant because it seems that second row is no longer adjacent and above the first row in this configuration. If the applicant is not claiming a container such as in Figure 7 but some further embodiment then how are the ends still attached if a flap is across the end and into the side?

- Claims 32-41 depend from claim 31.
- Regarding claim 42 the applicant discloses, "An enclosed carton for carrying a plurality of cylindrical containers in a plurality of rows, **including a first row, and a second row adjacent and above the first row**, with each container having a

diameter and two ends, the carton comprising:

- a. **a bottom panel, top panel and foldably attached adjoining side panels;**
- b. a plurality of ends, at least one of which is an exiting end capable of permitting the containers to exit the carton one at a time, said exiting end having a bottom tear line and a top tear line extending thereacross for forming an opening, said bottom tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane, said top tear line having a height from said bottom panel that is greater than the diameter of one of the containers to be contained in the first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically rolling out when the carton is disposed on a horizontal plane;
- c. said top and bottom tear lines extending into at least one of said side panels and turning towards each other a sufficient distance to permit said top and bottom tear lines to be separated to expose each said end of a container in the second row adjacent said exiting end; and
- d. means for closing any end of the carton that is not the exiting end.

This is similar to claim 22. It does not seem that the written description describes the invention in terms of having top and bottom tear lines extending across the exiting end formed by the end panels but rather across the side panel and into the top and bottom panels. The embodiments disclosed by the applicant seem to describe the exiting as taking place **adjacent** to an end **but through** a side (15), yet the applicant

claims that a flap is formed and removed from top and bottom tear lines extending across an exiting end (not on a across a side panel) and meeting in at least one side panel. This is enabled in the applicant's disclosure by re-orienting the container (see Figure 7). If the applicant is claiming a container such as Figure 7 then the claim is not enabled by the disclosure of the applicant because it seems that second row is no longer adjacent and above the first row in this configuration. If the applicant is not claiming a container such as in Figure 7 but some further embodiment then how are the ends still attached if a flap is across the end and into the side?

- Claims 43-50 depend from claim 42.
- Regarding claim 51 the applicant discloses, "An enclosed carton for carrying a plurality of cylindrical containers in a plurality of rows, **including a first row, and a second row adjacent and above the first row**, with each container having a diameter and two ends, the carton comprising:
 - a. a bottom panel, top panel and foldably attached adjoining side panels;
 - b. a plurality of ends, at least one of which is an exiting end capable of permitting the containers to exit the carton one at a time, said exiting end having a bottom end flap which is attached by a fold line to the bottom panel, a top end flap foldably attached to the top panel, side end flaps foldably attached to each side panel and means for attaching all said flaps together to close the exiting end of carton;
 - c. said exiting end having a bottom tear line and a top tear line formed in each side end panel and extending thereacross for forming an opening, said bottom

tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane, said top tear line having a height from said bottom panel that is greater than the diameter of a container to be contained in said first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically exiting the carton when the carton is on a horizontal plane;

d. said top and bottom tear lines extending into at least one of said side panels and turning towards each other a sufficient distance to permit said top and bottom tear lines to be separated to expose at least the end of a container in the second row adjacent said exiting end; and

e. means for closing any end of the carton that is not the exiting end.

This is similar to claim 22. It does not seem that the written description describes the invention in terms of having top and bottom tear lines extending across the exiting end formed by the end panels but rather across the side panel and into the top and bottom panels. The embodiments disclosed by the applicant seem to describe the exiting as taking place **adjacent** to an end **but through** a side (15), yet the applicant claims that a flap is formed and removed from top and bottom tear lines extending across an exiting end (not on a across a side panel) and meeting in at least one side panel. This is enabled by in the applicant's disclosure by re-orienting the container (see Figure 7). If the applicant is claiming a container such as Figure 7 then the claim is not enabled by the disclosure of the applicant because it seems that second row is no

longer adjacent and above the first row in this configuration. If the applicant is not claiming a container such as in Figure 7 but some further embodiment then how are the ends still attached if a flap is across the end and into the side?

- Claims 52-57 depend from claim 51.
- Furthermore, Claims 28, 40, 50, and 57 are for a handle in the top panel. Where is this disclosed anywhere?

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 22-57 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. The claims in light of the specification do not make clear which panels are the top, bottom, side, and ends for the reasons given above.

Claim Rejections - 35 USC § 103

7. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

8. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.

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2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

9. Claims 1-57 are rejected under 35 U.S.C. 103(a) as being unpatentable over Oliff et al. (USP 5,368,194) and further in view of Root (USP 3,356,279).

Regarding claim 1, Oliff et al. disclose a paperboard carton (1) for articles arranged in an end-on-end relationship in at least two layers, the carton having a top panel (12 or 18), a base panel (18 or 12), and a pair of oppositely disposed side panels (14,22), an end panel combination provided at each end of the carton to close each end of the carton (see Figures 1 and 7), and a divider pad (90) provided between the adjacent end-on-end layers of articles (see Figure 5) and being secured relative to a first end panel combination of the end panel combinations at a first end (see column 5 lines 10-19), a first side panel of the pair of side panels having a removable portion (58). However, they do not specifically disclose the removable portion to be adjacent to said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination. Root discloses a carton for articles arranged in an end-on-end relationship having a first side panel (24) of a pair of side panels (24,26) having a removable portion (44) adjacent to said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination (see Figures 1-2). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by arranging the removable portion in the paperboard carton to be adjacent to said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination,

as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 2, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. disclose a carton wherein the divider pad is secured relative to a second end panel combination of the end panel combinations (see column 5 lines 10-21).

Regarding claim 3, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. disclose a carton wherein the first and second end panel combinations comprise a pair of oppositely disposed side end flaps (60,66 and 76,80) hingedly connected to the side panels (14,22) and a pair of oppositely disposed main end flaps (30,34, and 72,112) hingedly connected to the top and base panels (12,18) respectively.

Regarding claim 4, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. disclose a carton wherein the divider pad (90) has a fold down gluing panel (94,98) at each secured end.

Regarding claim 5, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 4. Furthermore, Oliff et al. disclose a carton wherein the top end flap is folded down last and is adhesively secured to the respective end flaps of the respective end panel combination and to the respective fold down gluing panel (see column 5 lines 10-21).

Regarding claim 6, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 5. Furthermore, Oliff et al. disclose a carton wherein a glue line adhesively attaches the top end flap to the other end flaps and gluing panel. However, he does not specifically disclose the glue line to be a single straight glue line that adhesively attaches the top end flap to the other end flaps and gluing panel. Yet, adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). Furthermore, the reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by adjusting the features of the carton in order to adhesively attach the top end flap to the other end flaps and gluing panel with a single straight glue line for the purpose of being a desirable adjustment and/or a design consideration within the skill of the art.

Regarding claim 7, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 6. Furthermore, Oliff et al. disclose a carton wherein an end flap has a central projecting area and the glue line is provided on the side end flaps, the gluing panel, the central area of the end flaps, the gluing panel or the other side end flap. However, he does not specifically disclose a base end flap that has a central projecting area and the straight glue line is provided on the side end flaps, the gluing panel, the central area of the base end flaps, the gluing panel or the other side end flap. Yet,

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adjustability, where desirable, is a modification that is within the skill of the art. In re Stevens, 212 F.2d 197, 101 USPQ 284 (CCPA 1954). Furthermore, the reversal of components in a prior art reference, where there is no disclosed significance to such reversal, is a design consideration within the skill of the art. In re Gazda, 219 F.2d 449, 104 USPQ 400 (CCPA 1955); In re Japikse, 181 F.2d 1019, 86 USPQ 70 (CCPA 1950). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by adjusting the features of the carton in order to provide a base end flap that has a central projecting area and the straight glue line is provided on the side end flaps, the gluing panel, the central area of the base end flaps, the gluing panel or the other side end flap for the purpose of being a desirable adjustment and/or a design consideration within the skill of the art.

Regarding claim 8, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. discloses a carton wherein a removable portion is defined by perforations or other lines of weakening. However, Oliff et al. does not disclose a carton wherein said removable portion extends into the top and base panels to aid removal of the articles. Yet, Root discloses a carton wherein said removable portion extends into the top and base panels to aid removal of the articles and also said removable portion is defined by perforations or other lines of weakening (see Figures 1-2). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by adjusting the features of the carton in order to provide a removable portion that extends into the top and base panels to aid removal of the articles, as disclosed by Root, for the purpose of providing a

feature in a container with simple means to easily open and access an article carried therewithin (see column 1 lines 37-47).

Regarding claim 9, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. discloses a carton wherein the top panel, base panel, two side and two end panel combinations are substantially rectangular (see Figure 1).

Regarding claim 10, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 1. Furthermore, Oliff et al. discloses a carton wherein at least one cut extends partway to the end adjacent the removable portion (see Figure 1).

Regarding claim 11, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 10. Furthermore, Oliff et al. discloses a carton wherein two cuts extend along the folds between one said side panel and the top and base panels respectively (see Figure 1).

Regarding claim 12, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 10. Furthermore, Oliff et al. discloses a carton wherein a transverse cut is provided at a terminus of each said at least one cut remote from the removable portion (see Figure 1).

Regarding claim 13, Oliff et al. discloses a blank capable of being formed into a paperboard carton for articles arranged in an end-on-end relationship in at least two layers (see Figures 1 and 5), the blank having a top panel (12 or 18), a base panel (12 or 18), and a pair of oppositely disposed side panels (14,22), an end panel combination provided at each end of the carton to close each end of the carton (see Figures 1 and

7), and a divider pad (90) provided between the adjacent end-on-end layers of articles and being secured relative to a first end panel combination of the end panel combinations at a first end (see column 5 lines 10-19), a first side panel (14) of the pair of side panels having a removable portion (58). However, they do not specifically disclose the removable portion to be adjacent said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination. Root discloses a carton for articles arranged in an end-on-end relationship having a first side panel (24) of a pair of side panels (24,26) having a removable portion (44) adjacent to said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination (see Figures 1-2). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by arranging the removable portion in the blank forming the paperboard carton to be adjacent to said first end so as to define a roll-out aperture for article removal when the carton is lying on said first end panel combination, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 14, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 13. Furthermore, Oliff et al. disclose a blank wherein the divider pad is secured relative to a second end panel combination of the end panel combinations (see column 5 lines 10-21).

Regarding claim 15, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 13. Furthermore, Oliff et al. disclose a blank wherein the first and second end panel combinations comprise a pair of oppositely disposed side end flaps (60,66 and 76,80) hingedly connected to the side panels (14,22) and a pair of oppositely disposed main end flaps (30,34, and 72,112) hingedly connected to the top and base panels (12,18) respectively.

Regarding claim 16, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 13. Furthermore, Oliff et al. disclose a blank wherein the divider pad (90) has a fold down gluing panel (94,98) at each secured end.

Regarding claim 17, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 13. Furthermore, Oliff et al. discloses a blank wherein a removable portion is defined by perforations or other lines of weakening. However, Oliff et al. does not disclose a blank wherein said removable portion extends into the top and base panels to aid removal of the articles. Yet, Root discloses a blank wherein said removable portion extends into the top and base panels to aid removal of the articles and also said removable portion is defined by perforations or other lines of weakening (see Figures 1-2). Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by adjusting the features of the blank in order to provide a removable portion that extends into the top and base panels to aid removal of the articles, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin (see column 1 lines 37-47).

Regarding claim 18, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 3. Furthermore, Oliff et al. discloses a carton wherein the top panel, base panel, two side and two end panel combinations are substantially rectangular (see Figure 1).

Regarding claim 19, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 13. Furthermore, Oliff et al. discloses a blank wherein at least one cut extends partway to the end adjacent the removable portion (see Figure 1).

Regarding claim 20, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 19. Furthermore, Oliff et al. discloses a blank wherein two cuts extend along the folds between one said side panel and the top and base panels respectively (see Figure 1).

Regarding claim 21, Oliff et al. in view of Root disclose a blank obvious over the claim of claim 19. Furthermore, Oliff et al. discloses a blank wherein a transverse cut is provided at a terminus of each said at least one cut remote from the removable portion (see Figure 1).

Regarding claim 22, Oliff et al. discloses an enclosed carton (1) for a plurality of cylindrical containers in a plurality of rows, including a first row and a second row adjacent and above the first row (see Figure 5), the carton comprising:

- a top panel, two side panels, a bottom panel, and two closed ends, at least one of which is an exiting end (see Figure 1)
- b. the tear lines defining an opening flap which is at least partially detachable from the carton along the tear lines to create an opening between the tear lines;

- c. the bottom tear line being spaced above the bottom panel (see Figure 1)
- d. the top and bottom tear lines being located that when the opening flap is at least partially removed:
 - (1) the container in the first row which is adjacent the exiting end and the container in the second row which is adjacent the exiting end are both prevented from rolling out of the carton, and
 - (2) the container in the second row which is adjacent the exiting end can be removed from the carton through the opening prior to removal of the container in the first row which is adjacent the exiting end.

However, they do not disclose top and bottom tear lines that extend across the exiting end and into at least one of the side panels and meet each other in the at least one side panel. Root discloses top and bottom tear lines that extend across the exiting end and into at least one of the side panels and meet each other in the at least one side panel. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by arranging top and bottom tear lines that extend across the exiting end and into at least one of the side panels and meet each other in the at least one side panel, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 23, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 22. Furthermore, Root discloses a carton wherein the top and bottom tear

lines extend into both side panels, and meet each other in both side panels. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by arranging the top and bottom tear lines to extend into both side panels, and meet each other in both side panels, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 24, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 23. Furthermore, Oliff et al. disclose a carton wherein at least a part of each end of the container in the second row which is adjacent the exiting end is exposed when the opening flap is removed, whereby said container ends may be grasped to remove the container in the second row which is adjacent the exiting end from the carton through the opening.

Regarding claim 25, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 22. Furthermore, Root discloses a carton wherein when the opening flap is removed, a stop wall prevents the container in the first row adjacent the exiting end from rolling out of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a stop wall that prevents the container in the first row adjacent the exiting end from rolling out of the carton when the opening flap is removed, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 26, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 25. Furthermore, Oliff et al. disclose a carton including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton (see Figure 8).

Regarding claim 27, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 26. Furthermore, Oliff et al. disclose a carton wherein the flap means includes at least one cut about which the flap is flexed (see Figure 7).

Regarding claim 28, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 22. Furthermore, Oliff et al. disclose a carton including a handle (26) in the top panel.

Regarding claim 29, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 22. Furthermore, Oliff et al. disclose a carton wherein a means for removing the opening flap is located at least partially in an area of the side panel that forms a part of the opening flap.

Regarding claim 30, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 22. Furthermore, Oliff et al. disclose a carton wherein the containers are cans.

Regarding claim 31, Oliff et al. disclose an enclosed carton for cylindrical containers arranged in a plurality of rows, including a first row and a second row adjacent and above the first row, the carton comprising:

- a top panel, two side panels, a bottom panel, and two closed ends, one of which is an exiting end (see Figure 1)

- c. the portion of the exiting end between the two tear lines forming an opening flap which is at least partially removable to create an opening;
- d. the top and bottom tear lines each being at a sufficient height above the bottom panel to retain all the containers in the carton when the opening is created; and
- e. the top and bottom tear lines being so positioned and having a sufficient distance between them to permit a container from the second row to be removed through the dispenser opening prior to removal of a container from the first row.

However, they do not disclose the top and bottom lines, each extending across the exiting end from one side panel to the other. Root discloses a carton including top and bottom lines, each extending across the exiting end from one side panel to the other. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including top and bottom lines, each extending across the exiting end from one side panel to the other, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 32, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Root discloses a carton wherein the bottom tear line has a sufficient height above the bottom panel to prevent any containers in the first row from automatically rolling out of the opening when the carton is disposed on a horizontal

plane. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a bottom tear line that has a sufficient height above the bottom panel to prevent any containers in the first row from automatically rolling out of the opening when the carton is disposed on a horizontal plane as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 33, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Root discloses a carton wherein the top tear line has a sufficient height above the bottom panel to prevent any containers in the second row from automatically rolling out of the opening when the carton is disposed on a horizontal plane. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a top tear line that has a sufficient height above the bottom panel to prevent any containers in the first row from automatically rolling out of the opening when the carton is disposed on a horizontal plane as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 34, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Root discloses a carton wherein the top and bottom tear lines extended into at least one side panel and meet each other in the at least one side panel, thereby defining a portion of the side panel that is removable as a part of the opening flap. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including top and

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bottom tear lines that extend into at least one side panel and meet each other in the at least one side panel, thereby defining a portion of the side panel that is removable as a part of the opening flap, as disclosed by Root, for the purpose of providing a feature in a container with simple means to easily open and access an article carried therewithin, in addition to providing a feature intended to assure minimum loss of structural strength for the container means (see column 1 lines 37-47).

Regarding claim 35, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 34. Furthermore, Oliff et al. disclose a carton wherein a portion exposes at least a part of an end of a container in the second row when the opening flap is removed (see Figure 8).

Regarding claim 36, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 34. Furthermore, Oliff et al. disclose a carton wherein a means for removing the opening flap is located at least partially in said portion of the at least one side panel.

Regarding claim 37, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Root discloses a carton wherein when the opening flap is removed, a stop wall prevents the container in the first row adjacent the exiting end from rolling out of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a stop wall that prevents the container in the first row adjacent the exiting end from rolling out of the carton when the opening flap is removed, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 38, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 37. Furthermore, Root discloses a carton including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 39, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 38. Furthermore, Oliff et al. disclose a carton wherein the flap means includes at least one cut about which the flap is flexed.

Regarding claim 40, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Oliff et al. disclose a carton including a handle (26) in the top panel.

Regarding claim 41, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 31. Furthermore, Oliff et al. disclose a carton wherein the containers are cans.

Regarding claim 42, Oliff et al. disclose an enclosed carton for carrying a plurality of cylindrical containers in a plurality of rows, including a first row, and a second row adjacent and above the first row, with each container having a diameter and two ends, the carton comprising:

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- a bottom panel, top panel and foldably attached adjoining side panels (see Figure 1-8)
- b. a plurality of ends, at least one of which is an exiting end capable of permitting the containers to exit the carton one at a time, said exiting end having a bottom tear line and a top tear line extending thereacross for forming an opening, said bottom tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane (see Figure 8)
- c. said top and bottom tear lines extending into at least one of said side panels and turning towards each other a sufficient distance to permit said top and bottom tear lines to be separated to expose each said end of a container in the second row adjacent said exiting end; and
- d. means for closing any end of the carton that is not the exiting end.

However, they do not specifically disclose top tear line having a height from said bottom panel that is greater than the diameter of one of the containers to be contained in the first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically rolling out when the carton is disposed on a horizontal plane. Root discloses a top tear line having a height from said bottom panel that is greater than the diameter of one of the containers to be contained in the first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically rolling out when the carton is disposed on a horizontal plane. Therefore, it would have been obvious to a person of ordinary

skill in the art at the time of the applicant's invention to modify Oliff et al. by including a top tear line having a height from said bottom panel that is greater than the diameter of one of the containers to be contained in the first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically rolling out when the carton is disposed on a horizontal plane, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 43, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 42. Furthermore, Oliff et al. disclose a carton including at least one means for creating the opening located between said top and bottom tear lines.

Regarding claim 44, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 42. Furthermore, Oliff et al. disclose a carton in which a sufficient distance permits a container in the second row adjacent said exiting end to be grasped for removal from the carton.

Regarding claim 45, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 44. Furthermore, Oliff et al. disclose a carton including at least one means for creating the opening located between said top and bottom tear lines.

Regarding claim 46, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 45. Furthermore, Oliff et al. disclose a carton in which said means is located at least partially in at least one of the side panels (see Figure 8)

Regarding claim 47, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 42. Furthermore, Root discloses a carton wherein when the opening flap is removed, a stop wall prevents the container in the first row adjacent the exiting end

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from rolling out of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a stop wall that prevents the container in the first row adjacent the exiting end from rolling out of the carton when the opening flap is removed, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 48, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 47. Furthermore, Root discloses a carton including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 49, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 48. Furthermore, Oliff et al. disclose a carton wherein the flap means includes at least one cut about which the flap is flexed (see Figure 8).

Regarding claim 50, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 42. Furthermore, Oliff et al. disclose a carton including a handle (26) in the top panel.

Regarding claim 51, Oliff et al. disclose an enclosed carton for carrying a plurality of cylindrical containers in a plurality of rows, including a first row, and a second row

adjacent and above the first row, with each container having a diameter and two ends, the carton comprising:

- a bottom panel, top panel and foldably attached adjoining side panels (see Figure 1)
- b. a plurality of ends, at least one of which is an exiting end capable of permitting the containers to exit the carton one at a time (see Figure 8), said exiting end having a bottom end flap which is attached by a fold line to the bottom panel, a top end flap foldably attached to the top panel, side end flaps foldably attached to each side panel and means for attaching all said flaps together to close the exiting end of carton (see column 5 lines 10-22)
- d. said top and bottom tear lines extending into at least one of said side panels and turning towards each other a sufficient distance to permit said top and bottom tear lines to be separated to expose at least the end of a container in the second row adjacent said exiting end; and
- e. means for closing any end of the carton that is not the exiting end.

However, they do not disclose a carton comprising said exiting end having a bottom tear line and a top tear line formed in each side end panel and extending thereacross for forming an opening, said bottom tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane, said top tear line having a height from said bottom panel that is greater than the diameter of a container to be contained in said first row of containers and at a sufficient height from said bottom panel

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to prevent any container in the second row from automatically exiting the carton when the carton is on a horizontal plane. Root discloses a carton comprising said exiting end having a bottom tear line and a top tear line formed in each side end panel and extending thereacross for forming an opening, said bottom tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane, said top tear line having a height from said bottom panel that is greater than the diameter of a container to be contained in said first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically exiting the carton when the carton is on a horizontal plane. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a carton comprising said exiting end having a bottom tear line and a top tear line formed in each side end panel and extending thereacross for forming an opening, said bottom tear line having a height from said bottom panel that is sufficient to prevent any container in the first row from automatically exiting when said opening is created when the carton is on a horizontal plane, said top tear line having a height from said bottom panel that is greater than the diameter of a container to be contained in said first row of containers and at a sufficient height from said bottom panel to prevent any container in the second row from automatically exiting the carton when the carton is on a horizontal plane, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 52, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 51. Furthermore, Oliff et al. disclose a carton in which a sufficient distance permits the exposed container ends in the second row adjacent said exiting end to be grasped to remove the exposed container from the carton.

Regarding claim 53, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 52. Furthermore, Oliff et al. disclose a carton including a means for creating the opening located at least partially in said side panel.

Regarding claim 54, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 52. Furthermore, Root discloses a carton wherein when the opening flap is removed, a stop wall prevents the container in the first row adjacent the exiting end from rolling out of the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including a stop wall that prevents the container in the first row adjacent the exiting end from rolling out of the carton when the opening flap is removed, as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 55, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 54. Furthermore, Root discloses a carton including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease container removal from the carton. Therefore, it would have been obvious to a person of ordinary skill in the art at the time of the applicant's invention to modify Oliff et al. by including at least one flap means capable of creating a flap from a portion of the stop wall; the flap being capable of flexing outwardly to ease

container removal from the carton as disclosed by Root, for the purpose of providing retaining means (see column 2 lines 68-70).

Regarding claim 56, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 55. Furthermore, Oliff et al. disclose a carton wherein the flap means includes at least one cut about which the flap is flexed (see Figure 8).

Regarding claim 57, Oliff et al. in view of Root disclose a carton obvious over the claim of claim 51. Furthermore, Oliff et al. disclose a carton including a handle (26) in the top panel.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael K. Collins whose telephone number is (571) 272-8970. The examiner can normally be reached on 8:30 am - 5:00 pm M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene O. Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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8/20/2007



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